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Supreme Court of the United States

October Term, 1945

No. [redacted] 143

SAN GERONIMO DEVELOPMENT COMPANY, INC.,
Petitioner,

—vs.—

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

NELSON GAMMANS,
Solicitor for Petitioner.

MATTHEW L. LASZCZKOWSKI,
Of Counsel.

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Supreme Court of the United States

October Term, 1945

SAN GERONIMO DEVELOPMENT COMPANY, INC., Petitioner, —VS.— UNITED STATES OF AMERICA, Respondent.	No.

PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, San Geronimo Development Company, Inc., respectfully shows:

This is a petition for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit to review a decree made and entered in said Circuit Court of Appeals on March 4, 1946, by which a decree of the District Court of the United States for Puerto Rico in petitioner's favor was reversed (Appeal No. 4074) and a decree of said District Court limiting petitioner's recovery to $10,920.00 per annum was held ineffective in view of said reversal (Appeal No. 4075).

The mandate of the Circuit Court of Appeals has been stayed pending this application. (R 384)

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This petition involves three questions:

(1) Whether the Organic Act for Puerto Rico is binding as against subsequent Congressional legislation which does not purport expressly to be an amendment of or exception to the Organic Act; and

(2) Whether a change of property or status created by an administrative act under powers delegated by Congress is revocable.

(3) Whether a proclamation by the President under authority of an Act of Congress gives rise to an estoppel against the United States.

As to the first point: The Organic Act of March 2, 1917, authorized the President to transfer to the People of Puerto Rico "such lands, buildings, or interests in lands, or other property * * * as in his opinion are no longer needed for purposes of the United States." The Naval Service Appropriation Act of July 12, 1921, authorized a lease to petitioner's assignor, with the proviso: "That in time of war or national emergency, if necessary, the Navy Department shall have without cost free and unlimited use of any land so exchanged or leased." The Circuit Court of Appeals (R. 378) held that the terms of the Naval Service Appropriation Act of 1921 forbade the President's transferring to the People of Puerto Rico such part of the Federal Government's remaining rights in the leased property as included the "free and unlimited use" of the leased land "in time of war or national emergency, if necessary".

As to the second point: The Organic Act for Puerto Rico delegated to the President authority to find that "lands, buildings, or interests in lands, or other property * * * are no longer needed for purposes of the United States", and in the event of such finding, to transfer such rights to the People of Puerto Rico. The Presidential Proclamation of August 26, 1929, transferred to the People of Puerto Rico "all the right, title and interest of the United States in and to" a tract of land including the major part of the leased property, and recited the finding that "the said tract * * * is no longer needed for the purposes of the United States but is required for public use by the People of Puerto Rico."

The condemnation petition, filed some thirteen years later, states that "the Secretary of the Navy has deemed necessary for naval purposes the interest in the property hereby condemned" and that the proceedings are brought "pursuant to the request of the Secretary of the Navy". The Circuit Court of Appeals held that on the basis of that finding by the Admiral and the Secretary of the Navy, the Navy was entitled to free and unlimited use of the leasehold.

As to the third point: The Presidential Proclamation of August 26, 1929, as the basis of the transfer to the People of Puerto Rico of "all the right, title, and interest of the United States in and to" said property, declared that "the said tract * * * is no longer needed for the purposes of the United States". In reliance thereon, third parties bought parts of the leasehold on the property and they and petitioner erected buildings thereon, including a hotel. Subsequently, the Navy Department has taken the view that the property was longer required for the purposes of the United States and may be used without compensation, and that view has now been sustained by the Circuit Court of Appeals.

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

This case involves three questions of federal law, one of which has not been but should be settled by this Court, and the others of which have been decided in a way probably in conflict with applicable decisions of this Court.

The decision of this Court, on the first question, will serve to clarify a field of law in which clarification is badly needed, to wit, the constant conflict between the Organic Act and laws which fail to state expressly whether or not they apply to Puerto Rico and whether or not Congress intends them to prevail over the earlier provisions of the Organic Act. Decision on the second and third questions will serve to settle many of the cases arising out of war conditions and involving administrative acts of public officials.

There is presented herewith as part of this petition a certified transcript of the record of this cause in the Circuit Court of Appeals.

WHEREFORE, petitioner prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the First Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled

on its docket, No. 4074, United States of America, Appellant, v. San Geronimo Development Company, Inc., et al., Appellees, and No. 4075, San Geronimo Development Company, Inc., Appellant, v. United States of America, Appellee, and that the said decree of the United States Circuit Court of Appeals may be reversed by this Court, and that your petitioner may have such other or further relief in the premises as to this Court may seem meet and just.

And your petitioner will ever pray.

NELSON GAMMANS
JAMES R. BEVERLEY,
Solicitors for Petitioner.

I hereby certify that I have examined the foregoing petition, that, in my opinion, it is well founded and entitled to favorable consideration of the Court, and that it is not filed for purposes of delay.

NELSON GAMMANS,
Solicitor.

June 4, 1946.

BRIEF IN SUPPORT OF FOREGOING PETITION.

This is an application for a writ of certiorari to be directed to the United States Circuit Court of Appeals for the First Circuit.

OPINIONS OF THE COURTS BELOW.

The opinion of the Court below (R. 366), dated March 4, 1946, is reported in 154 F. 2d 78. The opinion of the United States District Court for Puerto Rico is not reported; it appears at page 158 of the record.

JURISDICTION OF THIS COURT.

Condemnation proceedings, under the title, "United States of America, Petitioner, v. 1,024 Square Meters of Land * * *, Defendants", were brought by the United States in the United States District Court for Puerto Rico under authority of the War Purposes Act, approved July 2, 1917 (40 Stat. 241; 50 U. S. C. 171), as supplemented by Title II of the Second War Powers Act of March 27, 1942 (Pub. No. 507, 77th Congress), and the Act of Congress approved August 1, 1888 (25 Stat. 357). No controversy exists as to the validity or meaning of those statutes.

The District Court (R. 305, 312) adjudged petitioner and others entitled to compensation for the use of the land and the buildings they had built thereon; and from this the United States appealed to the Circuit Court of Appeals (R. 316). The District Court (R. 305, 312) held petitioner entitled to $10,920 a year for the use of its portion of the leasehold, and from that decree petitioner appealed (R. 316). The Circuit Court of Appeals reversed the decrees appealed from by the United States and vacated the petitioner's appeal.

Certiorari is asked for, pursuant to Section 240-(a) of the Judicial Code, within three months after judgment of the Circuit Court of Appeals, which was on March 4, 1946 (R. 384).

STATEMENT OF THE MATTER INVOLVED.

The United States filed condemnation proceedings (petition, R. 2; amended petition, R. 5) in the United States District Court for Puerto Rico. The interest to be condemned was "the temporary use and occupancy" of the property "for the duration of the present states(s) of war", "the compensation * * * to be fixed and determined on a yearly basis" (R. 9, pars. 6 and 7). It contained a reservation that the United States might dispute the right of anyone to any compensation (R. 9, par. 8).

The Organic Act for Puerto Rico was approved March 2, 1917 (48 U. S. C. A. 731-893). Sec. 7 thereof (39 Stat. 954) authorized the President to convey to the People of Puerto Rico certain property rights which "in his opinion are no longer needed for purposes of the United States".

The Naval Service Appropriation Act of July 12, 1921, sec. 5 (42 Stat. 122, 139-140), authorized the lease of certain property to petitioner's assignor subject to a provision reserving use thereof by the Navy Department cost-free in time of war or national emergency, if necessary. Pursuant thereto, on July 15, 1921, the Navy, for various considerations, granted petitioner's assignor a 999-year lease of the property in question (R. 55-64), subject to the agreement that "the Navy Department shall retain title to said site of land" and the reservation that "the Navy Department shall have, in time of war or national emergency, if necessary, free and unlimited use, without cost, of the site of land herein leased" (R. 62).

In 1925, the United States filed a civil suit to cancel the lease for fraud. The United States District Court (a member of the Supreme Court of Puerto Rico, acting on account of the disqualification of the District Judge), found for the United States, but its decree was reversed by the Circuit Court of Appeals (Mandate, R. 292; opinion, 27 F. 2d 863), and in 1929 this Court denied the United States a writ of certiorari (278 U. S. 656).

The Presidential Proclamation of August 26, 1929 (46 Stat. 3004) issued under authority of Sec. 7 of the Organic Act, recited that "said tract * * * is no longer needed for the purposes of the United States" and on that basis transferred to the People of Puerto Rico "all the right, title, and interest of the United States in and to" said tract of land (R. 103, 104).

The lessee sub-leased parts of the leasehold to various persons, to some before and to some after the Proclamation (R. 10-11, 65-73, 86, 219, 223-224), and in 1930 assigned his remaining interest to petitioner (R. 172). Buildings, including a hotel, were built on the tract of land (R. 189). Attorneys for the Reconstruction Finance Corporation wrote the Federal Housing Administration on May 20, 1940 (R. 132, 180), that the Presidential Proclamation had terminated the Navy's right to use the property cost-free. At the time the proceedings were begun, various mortgagees, an insurance company, a local bank and the R. F. C. Mortgage Company, held mortgages on parts of the leasehold and improvements thereon. (Amended petition, R. 11.)

When war broke out in December, 1941, petitioner invited the Navy to use the premises, reserving the question whether rental should be paid for both land and buildings or only for the buildings (R. 131).

On June 16, 1942, the original petition in the proceedings was filed (R. 2), directed primarily at Jose R. Rosales and his wife, sublessees of a portion of the tract. An amended petition was filed July 31, 1942 (R. 5) against other sublessees. On January 18, 1943, the District Court held the property owners entitled to compensation for the use of lands and buildings, the amounts to be fixed (R. 158-161). Being required to answer (R. 164), petitioner did so on July 8, 1943 (R. 167). A new amended petition was filed January 28, 1944 (R. 192). On May 31, 1944, the District Court awarded Rosales $12,000 a year, as mutually agreed, for the rental of his hotel (R. 225) and in "Findings of Fact and Conclusions of Law" made other awards (R. 224). On October 2, 1944, the District Court awarded Mera, De la

Haba and petitioner fixed amounts of compensation (R. 305-307). This was corrected on December 13, 1944 (R. 308-315) and from this the United States appealed generally (R. 316) and petitioner appealed (R. 316) as to the amount awarded.

On February 15, 1945, on the verbal motion of the Government, the District Court entered a decree *nunc pro tunc* as of June 21, 1944 (R. 326-328). This was the date on which the United States had paid $51,852.50 into the Court Registry "being the amount of the deficiency provided for by Deficiency Judgment on May 31, 1944" (R. 298). On March 1, 1945, the United States appealed therefrom (R. 336). The appeals were consolidated (R. 341).

THE STATUTES AND EXECUTIVE ORDER.

The material portion of the Organic Act for Puerto Rico of March 2, 1917, 39 Stat. 954, 48 U. S. C. sec. 748, provides:

> The President may, from time to time, in his discretion, convey to the people of Puerto Rico, such lands, buildings, or interests in lands, or other property now owned by the United States, and within the territorial limits of Puerto Rico as in his opinion are no longer needed for purposes of the United States.

The Naval Service Appropriation Act of July 12, 1921, c. 44, 42 Stat. 122, 139-140, provides:

> SEC. 5. That as consideration for a suitable site and requisite rights, privileges, and easements for a receiving and distant-control radio station in Porto Rico the Secretary of the Navy be, and he hereby is, authorized to exchange or lease for such period as he may deem proper any land under naval control in Porto Rico not otherwise required for naval purposes: *Provided,* That in time of war or national emergency, if necessary, the Navy Department shall

have without cost free and unlimited use of any land so exchanged or leased.

The Presidential Proclamation of August 26, 1929, 46 Stat. 3004, provides:

> WHEREAS by Act of Congress approved March 2, 1917 (39 Stat. 951), entitled "An Act to provide a civil government for Porto Rico and for other purposes" it is provided, "That the President may from time to time, in his discretion, convey to the People of Porto Rico such lands, buildings, or interests in lands or other property now owned by the United States and within the territorial limits of Porto Rico, as in his opinion are no longer needed for purposes of the United States";
>
> AND WHEREAS the President, by an Executive Order of June 30, 1903, reserved for military purposes certain lands designated as the Military Reservation of San Juan, and said Military Reservation included the tract known as San Geronimo hereinafter described.
>
> AND WHEREAS the said tract, known as San Geronimo, and hereinafter more particularly described (excepting approximately five acres thereof), is no longer needed for the purposes of the United States but is required for public use by the People of Porto Rico,
>
> NOW, therefore, in pursuance of the authority vested in me by the Act of March 2, 1917, aforesaid, all the right, title, and interest of the United States in and to the following described tract of land is hereby transferred and conveyed to the People of Porto Rico, viz: * * * excepting and reserving, however, from the above-described tract hereby conveyed, five (5) acres, more or less, * * * The United States retains title to and jurisdiction over the said last mentioned five-acre tract.
>
> (Description of the parcels omitted.)

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred in holding:

(1) that by reason of the Act of 1921, Sec. 7 of the Organic Act no longer applied to the tract leased;

(2) that the finding upon which the Presidential Proclamation of 1929 was based is subject to subsequent reconsideration or cancellation; and

(3) that the United States may maintain a position contrary to the previous provision relied on by petitioners and others.

SUMMARY OF ARGUMENT.

1. The 1921 Act did not revoke the President's powers under Sec. 7 of the Organic Act.

2. The surrender of reserved rights by the Presidential Proclamation was irrevocable.

3. The United States is estopped by the Presidential Proclamation.

ARGUMENT.

I. THE 1921 ACT DID NOT REVOKE THE PRESIDENT'S POWERS UNDER THE ORGANIC ACT.

A. Implied repealer is not favored.

Repealer will not be implied unless the repugnancy of the statutes is such that effect cannot be given both statutes.

Cope v. *Cope*, 137 U. S. 682, 686 (1891);
U. S. v. *Burroughs*, 289 U. S. 159, 164 (1933);
U. S. v. *Jackson*, 302 U. S. 628, 631 (1938).

In the instant case the Circuit Court of Appeals (R. 378) held that the President's powers, under Section 7 of the Organic Act, to transfer to the Insular Government lands "in his opinion * * * no longer needed for purposes of the United States", were taken away, as concerns the San Geronimo tract, by the 1921 statute permitting a lease of that tract subject to a proviso allowing cost-free use thereof by the Navy Department "in time of war or national emergency, if necessary".

The two statutes are not repugnant. One deals with the relations of the United States to its island possession; the other deals with the reservation of rights in a lease to a private individual. Both statutes can be given effect. There is no reason why the making of the lease authorized by the 1921 Act should prevent the President later on from transferring to the Insular Government any reserved interests in lands upon his determining that they "are no longer needed for purposes of the United States."

B. The Organic Act, as a charter of government, is subject to amendment or exception only by an Act of Congress clearly intended as such.

The Organic Act is a charter of government. It sets up a framework under Article IV of the Constitution whereby civil government can be carried on in Puerto Rico without the constant intervention of Congress. That imports an idea of permanence and stability. Great confusion would result if general statutes must be interpreted as the last word of Congress in the government of a territory which, perhaps, the statutes do not even mention by name. It would seem proper for this Court to proclaim the principle that organic acts of territorial possessions should be considered unchanged in the absence of some rather definite proof of the intention of Congress to the contrary. See *Eckloff* v. *District of Columbia,* 135 U. S. 240, 243 (1890).

II. THE SURRENDER OF THE RESERVED RIGHTS BY THE PRESIDENTIAL PROCLAMATION WAS IRREVOCABLE.

A. The effect of the Proclamation was to surrender the reserved rights.

The Organic Act delegated to the President authority to find that "lands, buildings, or interests in land, or other property * * * are no longer needed for purposes of the United States", and in the event of such finding, to transfer such rights to the People of Puerto Rico. The power of the President was that of Congress under Article IV of the Constitution. When he found the required facts, the transfer was mandatory. It was necessary to carry out the policy of Congress that as soon as they were no longer needed for the national government all proprietary possessions and interests of the national government should be transferred to the local government. The Act contemplated a permanent transfer of property rights which were never again to be

needed. It did not authorize temporary leases to the People of Puerto Rico to exist merely as long as the national government might not require the property rights.

The President found the San Geronimo tract "no longer needed for the purposes of the United States"; he executed a formal transfer to the People of Puerto Rico of "all the right, title and interest of the United States in and to" the tract, excepting a 5-acre parcel not involved in this litigation, but he did not except either the reversion or the reserved rights.

In the absence of any known basis for reversing the transfer, it completely and finally disposed of any interest of the national government in the property, including its reversion and its reserved rights of "free and unlimited use" without cost.

B. The authority conferred by Congress on the President to make a transfer was exhausted by the user.

Section 7 of the Organic Act does not contemplate temporary transfers. As to each parcel of property it provides for one act by the President, to wit, the complete transfer upon finding certain conditions to exist. Having once carried out the policy of Congress, the President had no authority to adopt a policy contrary to that of Congress, or, in other words, to retake the property from the People of Puerto Rico. His authority was exhausted by making the transfer.

Although Section 7 does provide for accepting from the People of Puerto Rico lands, etc., "which may be needed for public purposes by the United States", it can only be done "by legislative grant".

C. The Secretary of the Navy has no authority to reverse the act of the President.

If the President has no authority from Congress to undo what he has done at the orders of Congress, much less can the act of the President be reversed by a Cabinet official

not even mentioned in Sec. 7 of the Organic Act, and this is so though the attempted reversal of policy is concurred in by a Governor of Puerto Rico acting outside of his own powers. In the light of the second sentence of Sec. 7, the act of the Governor in purporting to retransfer the reserved rights (as shown in the letters appended to the brief of the United States in the Circuit Court of Appeals) was but an attempted usurpation of power and a nullity.

III. THE UNITED STATES IS ESTOPPED BY THE PRESIDENTIAL PROCLAMATION.

A. The Presidential Proclamation was an act of the United States.

Congress has authority to dispose of public property:

Heirs of Emerson v. *Hall,* 13 Pet. 409 (1839);
U. S. v. *Jordan,* 113 U. S. 418 (1885);
U. S. v. *Price,* 116 U. S. 43 (1885);
U. S. v. *Realty Co.,* 163 U. S. 427 (1896);
Marion, etc. Ry. Co. v. *U. S.,* 270 U. S. 280 (1926).

As to transfers to the Insular Government, Congress also has complete authority under Article IV of the Constitution. Congress properly delegated its authority to the President upon his finding certain facts. The President exercised the power conferred on him. The mere fact that he exercised his authority gives rise to the presumption that he passed on all of the prerequisites to such exercise of authority.

U. S. v. *Chemical Foundation,* 272 U. S. 1 (1926);
Nofire v. *U. S.,* 164 U. S. 657 (1897);
Gonzalez v. *Ross,* 120 U. S. 605 (1887).

This included the prerequisite that the property transferred to the People of Puerto Rico was "no longer needed for

purposes of the United States". This administrative finding of facts is conclusive on the Judiciary.

U. S. v. *Chemical Foundation,* 272 U. S. 1 (1926);
Silberschein v. *U. S.,* 266 U. S. 221 (1924);
Dakota Cent. Tel. Co. v. *South Dakota,* 250 U. S. 163 (1919).

The Proclamation was therefore the act of the United States.

B. The United States is estopped by its acts.

The United States was the plaintiff in the United States District Court, asking affirmative relief, to wit, the use of property without paying compensation. Where the United States seeks relief in the courts, it is subject to equitable defenses, including that of estoppel.

United States v. *Stinson,* 197 U. S. 200, 204, 205 (1905);
Dayton Airplane Co. v. *U. S.,* 21 F. 2d 673 (C. C. A. Sixth Circ., 1927);
The Falcon, 19 F. 2d 1009 (D. C., Md., 1927), at page 1014;
Lawrence, Equity Jurisprudence, Sec. 1063.

CONCLUSION.

It is respectfully submitted that the writ should be granted, the cause reviewed and the decree of the United States Circuit Court of Appeals reversed as prayed in the petition.

Dated, June 4, 1946.

NELSON GAMMANS,
Solicitor for Petitioner.

MATTHEW L. LASZCZKOWSKI,
Of Counsel.

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 143

SAN GERONIMO DEVELOPMENT CO., INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The trial court's opinion of January 18, 1943, denying the United States the right to occupy the land temporarily without charge (R. 158–161) is not reported. The opinion of the circuit court of appeals (R. 365–383) is reported in 154 F. 2d 78.

JURISDICTION

The judgment of the circuit court of appeals was entered on March 4, 1946 (R. 384). The petition for a writ of certiorari was filed on June 4, 1946. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

In 1921, pursuant to Act of Congress, federal property was leased for 999 years providing that in time of war or national emergency, if necessary, the Navy Department shall have without cost free and unlimited use of the land leased. This land was included in a larger area which, by Presidential Proclamation in 1929, was transferred to the People of Puerto Rico under authority of the Organic Act for Puerto Rico of 1917 which empowered the President to transfer property "no longer needed for purposes of the United States." The questions presented by these facts are:

1. Whether the Presidential Proclamation of 1929 should be construed as releasing the reserved right to use the property in time of war.

2. Whether the President was authorized to release such right.

3. Whether the United States is estopped to deny that such right was released.

STATUTES AND EXECUTIVE ORDER INVOLVED

The material portion of the Organic Act for Puerto Rico of March 2, 1917, 39 Stat. 951, 48 U. S. C. 748, provides:

> SEC. 7. * * * the President may from time to time, in his discretion, convey

to the people of Puerto Rico such lands, buildings, or interests in lands or other property now owned by the United States and within the territorial limits of Puerto Rico as in his opinion are no longer needed for purposes of the United States.

* * * * *

The Naval Service Appropriation Act of July 12, 1921, 42 Stat. 122, 139–140, provides:

SEC. 5. That as consideration for a suitable site and requisite rights, privileges, and easements for a receiving and distant-control radio station in Porto Rico the Secretary of the Navy be, and he hereby is, authorized to exchange or lease for such period as he may deem proper any land under naval control in Porto Rico not otherwise required for naval purposes: *Provided,* That in time of war or national emergency, if necessary, the Navy Department shall have without cost free and unlimited use of any land so exchanged or leased.

* * * * *

The Presidential Proclamation of August 26, 1929, 46 Stat. 3004, provides:

Whereas, by Act of Congress approved March 2, 1917 (39 Stat. 951), entitled "An Act to provide a civil government for Porto Rico and for other purposes" it is provided, "That the President may from time to time, in his discretion, convey to the People of Porto Rico such lands, buildings,

or interests in lands or other property now owned by the United States and within the territorial limits of Porto Rico, as in his opinion are no longer needed for purposes of the United States";

And whereas, the President, by an Executive Order of June 30, 1903, reserved for military purposes certain lands designated as the Military Reservation of San Juan, and said Military Reservation included the tract known as San Geronimo hereinafter described.

And whereas, the said tract, known as San Geronimo, and hereinafter more particularly described (excepting approximately five acres thereof), is no longer needed for the purposes of the United States but is required for public use by the People of Porto Rico,

Now, therefore, in pursuance of the authority vested in me by the Act of March 2, 1917, aforesaid, all the right, title, and interest of the United States in and to the following described tract of land is hereby transferred and conveyed to the People of Porto Rico, viz:

Beginning at a point No. 84 on the Military Road, as shown on the Military Chart of the Military Reservation of San Juan, Porto Rico, and extending in a straight line N. 23°29′ E., through point No. 83 to the sea; thence easterly along the shore line and outside of Fort San Geronimo to the Laguna; thence southerly and outside of the shore line of Fort San Geronimo, and

westerly and southerly along the shore line of the Laguna to San Antonio Battery; thence along San Antonio Channel to a point where the line through points No. 83 and No. 84 intersects the channel; thence along the line N. 23°29′ E. to point No. 84, together with all the right, title, and interest of the United States in all shore and submerged lands lying shoreward of a line drawn through points Nos. 90, 91, 92 and 93, as shown on the military chart of the Military Reservation of San Juan, Porto Rico;

excepting and reserving, however, from the above described tract hereby conveyed, five (5) acres, more or less, heretofore assigned to the uses of the Navy Department for the development of the naval communication service and for other purposes of the United States, southerly of and contiguous to the tract heretofore leased to Virgil Baker, and bounded on the north by the southerly line of the said Virgil Baker tract, being a straight line drawn from the point known as Point 85 at the southwesterly corner of the Virgil Baker tract, easterly along the southerly line of said Virgil Baker tract through Point 86 to the Laguna; on the west by a straight line drawn southerly from said Point 85 along the westerly line of the tract hereby conveyed; on the east by the shore line of the Laguna; and on the south by the northerly line of a proposed road the course and location of which road are to be fixed here-

after. The United States retains title to and jurisdiction over the said last mentioned five acre tract.

STATEMENT

Prior to 1921 the United States owned certain lands in Puerto Rico under control of the Navy Department, which had temporarily leased them to Virgil Baker. By Act of July 12, 1921, 42 Stat. 139–140, Congress authorized the Secretary of the Navy to exchange or lease the lands "Provided, That in time of war or national emergency, if necessary, the Navy Department shall have without cost free and unlimited use of any land so exchanged or leased." Pursuant to this authorization, the land was leased to Baker on July 15, 1921, for 999 years, reserving the right of entry to the Navy Department (R. 55–63). Subsequently, the United States brought suit to cancel the lease because of fraud. On July 30, 1928, a decree canceling the lease was reversed with directions to dismiss the bill of complaint. *Baker* v. *United States,* 27 F. 2d 863 (C. C. A. 1), certiorari denied, 278 U. S. 656.

The following year a proclamation was issued by the President, conveying to the people of Puerto Rico "all the right, title and interest of the United States" in various lands including the leased area, 46 Stat. 3004 (R. 103–105). This proclamation was issued under authority of the Organic Act for Puerto Rico of March 2, 1917 (39 Stat. 951, 48 U. S. C. 748), which empowers the

President to convey to Puerto Rico property no longer needed for purposes of the United States. The order did not mention the reserved right in the lease and only mentioned the leased area in describing the boundaries of a five-acre area excluded from the conveyance. Baker and his wife assigned to the San Geronimo Development Company, all of the stock of which was owned by them, their interest in the leased premises (R. 159). Since that time subleases have been made to various persons or corporations and improvements have been erected on some parts of the property (R. 159, 35–40, 65–101).

Late in 1941 the Navy Department desired to exercise the right of entry and to use the property for war purposes. The Navy Department demanded possession pursuant to the right of entry. However, some of the parties in possession resisted the demand and one of them attempted to obtain an injunction against the taking of possession. (R. 106–134.) This suit was dismissed (R. 46–47).

The present proceeding was instituted on June 16, 1942, in order to settle the controversy and in order to condemn temporary occupancy if the Navy Department did not have the right to possession (R. 2–4). The original petition related to only one parcel of property (R. 2–3). On July 31, 1942, an amended petition was filed so as to include other properties within the Baker lease (R. 5–13). Subsequently, the petition was again

amended so as to include land of the Development Company (R. 161–178, 192–194). The petition relied upon the Second War Powers Act of March 27, 1942 (56 Stat. 177, 50 U. S. C. App., Supp. IV, 632), and other condemnation statutes but without prejudice to the Government's claim that it had the right to use the property without compensation pursuant to the 1921 Act and the lease (R. 9–10). On July 31, 1942, the court entered its order authorizing the United States to take possession on August 1 (R. 13).

Various preliminary motions were denied and some of the defendants answered the complaint (R. 13–32). On December 28, 1942, trial was held relating to the right of the Navy Department to use the land without charge (R. 32–54) and on January 18, 1943, the court rejected the Government's contention. The opinion of the court concluded that the reservation of the right to occupy the land created a covenant running with the land, that the right passed under the Proclamation of 1929, and that it was unnecessary to decide what interest Puerto Rico has in the land (R. 158–161). The Government excepted to the court's rulings and the court ordered the case set down for trial as to compensation (R. 166).

Some of the parcels had been improved, the most important structure being the San Geronimo Hotel. Settlements were agreed upon with the lessees of improved properties and, on May 26, 1944, stipulations to make these settlements effec-

tive were filed in court (R. 332). In each stipulation an annual rental was agreed upon as compensation for the temporary occupancy of the improvements (R. 223–224). In return, the condemnees waived any claim for compensation for occupancy of the lands. No agreement was reached with Gabriel de la Haba, Jose Mera and the San Geronimo Development Company. The properties of de la Haba and Mera had been improved by streets and utility connections but no buildings had been erected upon them. The company's property had not been improved except for one concrete building. On May 26, 1944, trial was had before the court without a jury, relating to the amount of compensation payable to de la Haba and Mera (R. 195–217). On June 19, 1944, a similar trial was held as to the company's claims (R. 228–288). Moreover, the company not having participated at the trial in 1942, some evidence was introduced relating to the right of the Navy Department to use the lands without charge (R. 252–257).

On September 23, 1944, the court rendered an opinion in the form of an order in which it awarded compensation of $365 per annum to de la Haba, $317 per annum to Mera and $10,920 per annum to the Company (R. 303–305). Decision and judgment were entered in accordance with these conclusions on October 2, 1944 (R. 305–307). This judgment was amended in particulars not material here on December 13, 1944 (R. 308–315).

On December 28, 1944, the United States filed notice of appeal from the judgment (R. 316) and on January 2, 1945, the San Geronimo Development Company appealed as to the amount of compensation awarded (R. 316–317).

In an opinion of March 4, 1946, the circuit court of appeals concluded that the Navy Department did have the right to use the land for war purposes without paying compensation.[1] The judgments below were accordingly reversed and the company's appeal was dismissed.

ARGUMENT

Petitioner seeks review solely of the question whether the Navy Department was entitled to use the land without cost during the war emergency as provided in the 1921 Act and the lease to Virgil Baker. As the court below stated (R. 366), this question "is a special and non-recurring one as to which there are no precedents to indicate the answer." Moreover, the decision below is clearly correct.

Petitioner apparently takes the view that the reserved right of wartime use was transferred to Puerto Rico by the Presidential Proclamation of 1929 (cf. Pet. 12). But since Puerto Rico has no navy and does not independently wage war, such right could not be so transferred and, as the

[1] The opinion deals with several other questions which are not now important such as the appropriateness of the procedure used to raise the question.

court below stated (R. 377), it was "personal" to the United States.[2] Thus, petitioner is, in fact, contending that the effect of the Presidential Proclamation was to release the reserved right. Plainly, the proclamation did not have any such effect.

1. The proclamation does not purport to release the right of wartime use. In fact, it does not even refer to the reserved right and the lease is mentioned only in boundary descriptions. The proclamation included not only the lands leased to Baker but a much larger area which had been a military reservation. Since it had been concluded that the larger area was no longer needed for federal purposes, it is quite reasonable, for reasons of civil and criminal jurisdiction, to transfer to Puerto Rico the fee title which remained in the Government after the 999 year lease. Thus, the proclamation is adequately effective when construed to transfer only the fee

[2] For this reason, the United States urged that if an attempt should be made to fit this right into traditional categories of property law, the closest analogy would be an easement in gross. Moreover, there was attached to the Government's brief in the court below a letter of the Governor of Puerto Rico dated December 15, 1941, in which the Governor authorized the use of the land without cost by the Navy Department. The Government urged that this official act was the proper subject of judicial notice and that, if it should be concluded that the reserved right had been transferred to Puerto Rico, the letter would show that it had been exercised on behalf of the Navy Department. Petitioner's argument (Pet. 14–15) that the Governor lacked authority to exercise such right is, we believe, without merit. See 48 U. S. C. 771.

title and as not affecting the reserved right of use. There is nothing in the proclamation to indicate an intention to release such right and thus confer a windfall on Baker and his sublessees (cf. R. 379–380).

2. The President lacked power to release the reserved right. When Congress in 1921 authorized the exchange or lease of these lands it specifically required that the right of free use in wartime be reserved. And this reserved right was the most important consideration flowing to the Government from the lease transaction. See *Baker* v. *United States,* 27 F. 2d 863, 871 (C. C. A. 1). Congress having made specific provision for disposition of this specific parcel[3] it thereby superseded the general provisions of the Organic Act. Consequently, no question is here presented as to amendment of the Organic Act by a general statute which does not mention the territory (cf. Pet. 13). The Organic Act cannot be construed to authorize the President to release the reserved right since "Authority to make a public grant of land to the insular government can hardly embrace authority to offer a private gratuity to the Baker interests" (R. 379). The Secretary of the Navy is not, as petitioner asserts (Pet. 14–15), attempting to reverse the act of the President. On the contrary, under petitioner's construction, the

[3] The legislative history of the 1921 Act shows that it was directed to this particular land. See *Baker* v. *United States,* 27 F. 2d at pp. 866–868.

President in 1929 overruled the Congressional determination of 1921. In 1921 it had been determined that the Baker tract was no longer needed for Government purposes except for the reserved right (cf. R. 60). Hence, as to the Baker tract, the determination as to the extent to which the land was needed for Government uses had been made long before the proclamation of 1929 was issued. This clearly appears from the fact that the 1921 Act authorized either a deed or lease. Thus Congress made complete provision for its disposition and the President had no authority to alter that provision.

3. Petitioner's estoppel argument (Pet. 15–16) is based on the erroneous assumption that the Presidential Proclamation intended to transfer the reserved right and that the President had authority to do so. But estoppel cannot operate to validate an unauthorized act of a government officer. *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409. Moreover, improvements were not made on petitioner's property in reliance upon the proclamation.[4] The United States set-

[4] The lease to Virgil Baker containing the reserved right was recorded and, as the district court stated (R. 159), the various assignments and subleases referred thereto (R. 65–100), specific reference being made to the reserved right (R. 68, 72). On the other hand, no reference is made to the proclamation which does not appear to have been recorded. Thus, there is no evidence to support petitioner's assertion (Pet. 3) that it and other sublessees relied upon the proclamation in subleasing.

tled with all the owners of improved properties since it was believed that different questions were presented as to them. But petitioner's property had never been improved except for one concrete building which Baker had in the lease agreed to erect (R. 62, 264). Thus, there is a complete absence of any evidence that in reliance upon a representation in the proclamation petitioner took action to its detriment. There is not, therefore, any basis for the estoppel claim.

CONCLUSION

The decision of the court below is correct, and there is no conflict of decision. The issue presented is unique and not likely to arise again, and no question of public importance is involved. It is respectfully submitted that the petition should be denied.

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